



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

April 14, 2004

Mr. Kevin McBride  
Morris & Ritchie Associates, Inc.  
404 South Bedford Street, Ste 5  
Georgetown, DE 19947

RE: PLUS review – PLUS 2004-03-04; Sundance/Windstone Project

Dear Mr. McBride:

Thank you for meeting with State agency planners on March 24, 2004 to discuss the proposed plans for Sundance or Windstone project to be located north of Cave Neck Road between Delaware Route 1 and Dairy Farm Road (Sussex Road 261).

According to the information received, you are seeking an AR-1 cluster zoning through Sussex County to place 351 units on 180.33 acres.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as Sussex County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

We note that this project is in a "Rural" area as designated by the Strategies for State Policies and Spending approved in 1999. The 2004 update of the Strategies indicates that this designation will continue. The State would prefer to see a project such as this in an area designated for growth by the Sussex County Comprehensive Plan and the Strategies for State Policies and Spending.

We also understand that this project is designed in anticipation of Sussex County's adoption of a cluster ordinance for the AR-1 zone. The State believes that a cluster project should include a higher level of open space than called for in the current site plan, and we encourage you to incorporate additional open space for resource protection and both active and passive recreation.

This office has received the following comments from State agencies:

**State Historic Preservation Office (SHPO) – Contact: Anne McCleave 739-5685**

There is a high probability for prehistoric and historic archeological sites in the subject area, especially the wooded area on the northeast end. It is suggested that the development stay out of the wooded area to lessen impact to any archeological sites. It was stated on the application that this development will not require any federal involvement; however, if this changes, the federal agency must comply with Section 106 of the National Historic Preservation Act.

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

The developer's traffic engineer has submitted a traffic impact study (TIS) to DelDOT. They have reviewed that TIS and offered their recommendations to Sussex County (copy enclosed). The review of the TIS identified several road improvements that should be required of the developer.

It was indicated on the PLUS application that you did not anticipate developer funding for infrastructure improvement. Because the location of this project is in a Rural Area according to the Strategies for State Policies and Spending, DelDOT expects you to fund all road infrastructure needed to support this project. For some improvements you may be able to work with other developers to share costs, but State assistance should not be expected.

The sketch plan presented shows a stub street to permit a future connection to adjoining lands on Hudson Road. DelDOT commends the developer for providing this connection.

The sketch plan shows two proposed entrances on Cave Neck Road. The east entrance is shown opposite Old Grist Run in Overbrook Shores, while the west entrance is offset from the proposed entrance to Vincent Overlook. DelDOT recommends that the west entrance be aligned with the entrance to the proposed subdivision of Vincent Overlook. The developer's engineer should coordinate with the Subdivision Manager, Mr. John Fiori, to determine what DelDOT will require regarding the proposed site entrances. Mr. Fiori may be reached at (302) 760-2260.

**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-3091**

**Wastewater**

The Division of Water Resources has received a letter of intent to develop a spray irrigation facility for the development. The design flow for the project is estimated at

87,000 gallons per day. Preliminary information verbally supplied to the Division indicates that there is an adequate area of suitable soils. The consultant should stay in close correspondence throughout the process with the Division.

### **Water Supply**

Any public drinking water well that is located within the development must be located a minimum of 150 feet away from any outside boundary.

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

### **Soils and Groundwater Recharge Potential**

According to the soil survey update, the following soils were found in the immediate vicinity of the proposed construction:

- Excessively well drained - Runclint
- Well Drained – Downer & Ingleside
- Moderately well drained – Woodstown & Hammonton
- Poorly drained (**hydric**) – Hurlock
- Very poorly drained (**hydric**) – Chicone

### **Wetlands**

State wetland maps show that this site contains Palustrine Forested, Emergent and Scrub Shrub wetlands, in the eastern portion of the property and Palustrine Emergent wetlands near the western portion of the project site. Two streams and/or drainage ditches are also located in the southeastern portion of the property. It is the developer's responsibility to ensure that a wetland survey is conducted and verified by the U.S. Army Corps of Engineers to delineate the actual extent of wetlands on-site.

Particularly because this area is within an area designated as rural by the State Strategies, development activities should be curtailed in the northeastern portion of the property. Design plans show that numerous lots will be interspaced in and around these sensitive areas, causing primary and secondary impacts to wetlands and habitat in an area where the State largely discourages residential development of this type. Further, adequate

buffers are not provided. The streams are not delineated on the plans. 100 foot buffers should be employed from these waterbodies as well.

All lots and associated facilities (including treatment lagoons) should be located outside of wetland and forest boundaries. Vegetated buffers of 100 feet or more should be employed. Further, buffers should be part of community open space and not included within any lot lines. Wetlands preserved on site should be placed into a permanent conservation easement or other protection mechanism that will ensure the continued protection of these areas.

Impacts to waters of the U.S. are regulated by the USACE. Impacts within tidal wetlands and subaqueous lands are regulated by the State Division of Water Resources, Wetlands and Subaqueous Land Section. Individual permits and certain Nationwide Permits from the USACE also require 401 Water Quality Certification from the Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process. To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting.

### **TMDLs**

Currently there is no Total Maximum Daily Load (TMDL) established for the Broadkill sub-watershed. Pollution Control Strategies to reduce nutrients are encouraged currently and would be required when the regulation is developed.

### **Stormwater Management**

There is a need to further investigate the on-site drainage to determine if there are drainage ditches, or streams leading to the pond on site. This drainage, if it exists, may not be compromised without investigation.

Comments from the Sussex Conservation District regarding the pond are that if the existing pond is to be used for stormwater management, the pond will have to be modified to meet the Delaware Sediment and Stormwater Regulations, and DNREC's policy regarding Health and Safety Considerations dated 2000. A Certified Construction Reviewer is required for this site.

In addition, a pre-application meeting is suggested with the Sussex Conservation District and DNREC Drainage Section to discuss the stormwater plan as soon as possible. The issues of existing drainage and proposed stormwater strategy should be discussed together.

Sussex Conservation District: Jessica Watson 856-7219

DNREC Drainage Section: Tom Barthelmeh 739-4411

## Habitat

A review of our database indicates that the following species and/or communities at or adjacent to the project site:

| Scientific Name  | Common Name                      | Taxon     | State Rank | State Status | Global Rank | Federal Status |
|--|----------------------------------|-----------|------------|--------------|-------------|----------------|
| <i>Melanerpes erthrocephalus</i>                         | Red headed woodpecker            | Bird      | S1         | E            | G5          |                |
| <i>Quercus spp.-Carya spp.</i><br><i>/Cornus florida</i> | Oak-Hickory/Dogwood-Holly Forest | Community | S3         |              |             |                |

**State Rank:** S1 - extremely rare within the state (typically 5 or fewer occurrences); S2 - very rare within the state (6 to 20 occurrences); B - Breeding; N - Nonbreeding; **State Status:** E – endangered, i.e. designated by the Delaware Division of Fish and Wildlife as seriously threatened with extinction in the state; **Global Rank:** G1 - imperiled globally because of extreme rarity (5 or fewer occurrences worldwide); G2 - imperiled globally because of great rarity (6 to 20 occurrences); G3 - either very rare and local throughout its range (21 to 100 occurrences) or found only locally in a restricted range; G4 - apparently secure globally but uncommon in parts of its range; G5 - secure on a global basis but may be uncommon locally; T<sub>1</sub> - variety or subspecies rank; Q – questionable taxonomy; **Federal Status:** LE – endangered, i.e. designated by the U.S. Fish and Wildlife Service as being in danger of extinction throughout its range; LT – threatened, i.e. designated by USFWS as being likely to become endangered in the foreseeable future throughout all or a significant portion of its range; PS – proposed status.

Based on review of topographic maps and aerial photographs, and because DNREC has not visited the site previously, Delaware Natural Heritage Program (DNHP) ecologist Pete Bowman and botanist, Bill McAvoy requests the opportunity to survey the wetland resources which could potentially be impacted by the project. The site should also be evaluated for Red-headed Woodpecker habitat in May. The DNHP Zoologist Kitt Heckscher can evaluate habitat and search for nesting pairs. Observations of DNHP staff would allow them to make more informed comments on this project. Please contact Pete or Bill at (302) 653-2880 to set up a site visit.

The parcel contains portions of a large upland and wetland forest complex in the eastern portion of the site. This large forest block is one of the few in Sussex County that is over 25 acres in size. As such, it is large enough to provide unique habitat in this region, particularly for forest interior species. It provides links to expansive tracts of state and federally protected land in and around the Great Marsh. Any encroachment into the forested area will cause fragmentation of the forest, increasing the amount of forest edge and significantly decreasing its habitat value, particularly to forest interior dwelling species. Although it can be argued that the encroachment into the area has been minimized, it is important to recognize that site-specific impacts to wetland and forest habitat have a significant cumulative impact to the regional ecosystem. The forested portions of this property should remain undisturbed, and lots should be removed from this area. Land preserved on site should be placed into a permanent conservation easement or other binding conservation mechanism.

Bill McAvoy would also like an opportunity to review plant list used for restoration.

In addition, because of the presence of species in the table above, this project lies within a State Natural Heritage Site. However it does not lie within a Delaware National Estuarine Research Reserve. This is one of the criteria used to determine the presence of Critical Resource Waters. The final decision regarding Critical Resource Waters – if this is an issue – will be made by the U.S. Army Corps of Engineers (ACOE). The information above will aid the ACOE in their determination.

**Public Service Commission – Contact: Kevin Neilson 302-739-4247**

A CPCN must be obtained through the Delaware Public Service Commission for this area.

Any closed propane or natural gas distribution system will have to be coordinated with pipeline safety.

**State Fire Marshal's Office – Contact: Kevin McSweeney 739-3696**

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

a. **Fire Protection Water Requirements:**

- Where a water distribution system is proposed for single family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required. Community Center shall have 1000 gpm for 1-hour duration and fire hydrants with 800 feet spacing on centers.
- Where a water distribution system is proposed for townhouse type dwellings it shall be capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 800 feet spacing on centers are required.
- The infrastructure for fire protection water shall be provided, including the size of water mains.

b. **Accessibility:**

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.

- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

c. **Gas Piping and System Information:**

- Provide type of fuel proposed, and show locations of bulk containers on plan.

d. **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Name of Water Supplier
- Proposed Use
- National Fire Protection Association (NFPA) Construction Type
- Townhouse 2-hr separation wall details shall be shown on site plans
- Maximum Height of Buildings (including number of stories)
- Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.delawarestatefiremarshal.com](http://www.delawarestatefiremarshal.com), technical services link, plan review, applications or brochures.

**Department of Agriculture - Contact: Mark Davis 739-4811**

This site is the former location of a successful farming operation and the Department of Agriculture regrets the loss of productive agriculture. The area exhibits a mix of uses including significant residential development; however, the primary land use remains agricultural, with a great deal of land enrolled in the state's Agricultural Preservation Program. Although this site is not adjacent to or within 300 feet of an Agricultural Preservation District, it is encouraged that the developer utilize a modified agricultural notice in each new deed generated by the proposed subdivision. This notice can only serve to educate new residents about their surroundings and the facts related to living within or near-by an agricultural community. It is suggested the following language be inserted into each new deed. This suggested language is similar to the language required by State statute to be inserted within deeds if a new subdivision is isolated in whole or in part within 300 feet of an Agricultural Preservation District.

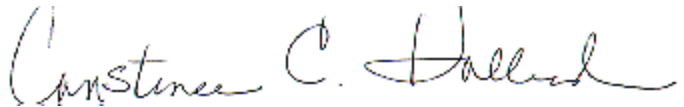
*“This property is located in the vicinity of an established Agricultural Preservation District and within an established and viable agricultural community in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.”*

**Delaware State Housing Authority – Contact: Karen Horton 739-4263**

While DSHA supports the concept of targeting first time homebuyers, they have stated that they prefer to see a project of this scale in a community or developing area according to the Strategies for State Policies and Spending.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in blue ink that reads "Constance C. Holland". The signature is fluid and cursive, with the first name "Constance" being the most prominent part.

Constance C. Holland, AICP  
Director

CC: Sussex County